

No. 20-5677

ORIGINAL

Supreme Court, U.S.  
FILED

AUG 25 2020

OFFICE OF THE CLERK

IN THE

**SUPREME COURT OF THE UNITED STATES**

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**In re, Jimmy Wren, Petitioner.**

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No. 20-60313

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**ON PETITION FOR EXTRAORDINARY WRIT  
OF PROHIBITION AND MANDAMUS  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LA.**

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**PETITION FOR AN EXTRAORDINARY WRIT OF PROHIBITION  
AND A WRIT OF MANDAMUS**

Jimmy Wren, #66051  
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Mississippi State Penitentiary  
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## QUESTIONS PRESENTED FOR REVIEW

1. Whether 28, §2244, U.S.C. deprives similar situated litigants of due process of law?
2. Whether the enforcement of 28, §2244, U.S.C., subjects similar situated litigants to cruel and unusual punishment?
3. Whether trial court violates due process by subjecting a first offender to the maximum punishment to cruel and unusual punishment, in the absence of a sentencing hearing to allow mitigating circumstances to justify the maximum sentence being imposed?
4. Whether 28, §2244, U.S.C., violates due process, when there is no right to seek further review by Motion to Rehear or Reconsideration?
5. Whether 28, §2244, U.S.C., violates due process when there is no right to an appeal from the denial of an application for permission to file a second or successive application for writ of habeas corpus?
6. Whether the requirement to seek permission to file a second or successive application for habeas corpus relief violates the ex post facto clause of the United States Constitution, when 28, §2244, U.S.C. did not exist in 1996 when this case originated?
7. Whether the state of Mississippi deprived the petitioner of due process, by denying the Motion to Recall its Mandate, so petitioner could seek relief under the new state rule under Rule 26.4, of Mississippi Rules of Criminal Procedure, for a sentencing hearing, which was not available in 1996, when this case originated?

**QUESTIONS FOR REVIEW CONTINUE:**

8. Whether the lower courts, State Supreme Court, District Court and U.S. Court of Appeals for the Fifth Circuit, deprived the petitioner of access to the courts to seek relief under the New Rule of Law, under Rule 26.4 of Mississippi Rules of Criminal procedure, which allowed the litigants to have a sentencing hearing, effective in July 1, 2017?
9. Whether the state courts were bias and prejudice towards the Petitioner, in the prosecution and sentencing of Petitioner, Wrenn?
10. Whether lower courts violated due process by ordering monetary sanctions, in the absence of a show cause hearing?

## LIST OF PARTIES

Marshall Turner, Superintendent of the Mississippi State Penitentiary; and the State of Mississippi are the only parties to this case and both entities can be served through the Attorney General's office for the state of Mississippi.

## RELATED CASES

*Lester v. State*, 726 So. 2d 598 (Miss. Ct. of App. 1998) (Reversed and remanded as to Lester only);

## MISSISSIPPI STATE LAW

To subject a first offender or an offender that has never been declared as a habitual offender to the maximum sentence that is allowed under §97-3-65, MCA would be an unjust decision, especially when there is a possibility the final decision could possibly be the fruits of 'abuse of discretion' and a violation of the cruel and unusual clause of the United States Constitution. See, Rule 26.4, Mississippi Rules of Criminal Procedure (MRCP).

### ***RULE 20 of the Supreme Court Rules***

Marshall Turner, Superintendent of the Mississippi State Penitentiary is the only party with the state of Mississippi. Relief is not available in any other court, since there is no right to further review in cases from the U.S. Court of Appeals for the Fifth Circuit in cases reviewed under 28, §2244, U.S.C., by motions to rehear, reconsider or an appeal. Relief is not available under habeas corpus since the court of appeals denied petitioner the opportunity to file a second or successive application. This application is in aid of this court's appellate jurisdiction and the above exceptional circumstances warrants the exercise of this Court's discretionary powers, and that adequate relief cannot be obtained in any other form or any other court.

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## **TABLE OF AUTHORITIES**

### **Cases:**

*Berry v. State*, 728 So. 2d 568, 571 (Miss. 1999);  
*Cohen v. State*, 732 So. 2d 867 (Miss. 1998);  
*Duckworth v. State*, 477 So. 2d 935, 938 (Miss. 1985);  
*Henderson v. United States*, 646 F. 3d 223;  
*In re, Johnson v. United States*, 520 U. S. 461 - 468;  
*Johnson v. Zerbst*, 304 U. S. 458 58 S. CT. 1019;  
*Milliken v. Meyer*, 61 S. Ct. 339, 85 L. Ed. 2d 278 (1940);  
*Scott County Co-op v. Brown*, 187 So. 2d 321 (Miss. 1966);  
*Thorpe v. Housing Authority of Durham*, 393 U. S. 268;  
*United States v. Olano*, 507 U. S. 725;  
*Thorpe v. Housing Authority of Durham*, 393 U. S. 268;  
*Voyles v. State*, 362 So. 2d 1236 (Miss. 1978);  
*Apprendi v. New Jersey*, 530 U.S. 466;

### ***United States Constitution***

Amendment VIII; Prohibiting cruel and unusual punishment;  
V and XIV Amendments, Guaranteeing  
equal protection and due process under the laws;  
Article 1, Section 9, Clause 3 for federal law;  
Article 1, Section 10, for state laws;  
Prohibiting ex post facto laws;

**Statutes:**

28, §2244, United States Codes  
§97-3-65, Mississippi Codes Ann.  
28, §1651(a), U.S.C.

**Rules:**

Rules 26.4 of the Mississippi Rules of Criminal Procedure;

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR EXTRAORDINARY WRIT  
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Petitioner respectfully prays that an extraordinary writ of prohibition and mandamus issue to review the judgment below.

***OPINIONS BELOW***

[ x ] For cases from ***federal courts***:

The opinion of the United States court of appeals appears at Appendix 'A' to the petition and is:

[ x ] Unpublished;

[ x ] For cases from ***state courts***:

The opinion of the highest state court to review the merits appears at Appendix 'C', 'D' and 'E' to the petition and are:

[ x ] Unpublished;

## ***JURISDICTION***

**[x] For cases from *federal courts*:**

The date on which the United States Court of Appeals decided m case was May 14, 2020;

**[x] There are no provisions for a rehearing from proceedings seeking permission to file a second or successive application for a 2254 habeas corpus relief;**

**[x] There are no provisions for further review by appellate jurisdiction to justify review by writ of certiorari;**

The jurisdiction of this court is invoked under 28, U.S.C., §1651(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS  
INVOLVED**

***United States Constitution***

Amendment VIII; Prohibiting cruel and unusual punishment;  
V and XIV Amendments, Guaranteeing  
equal protection and due process under the laws;  
Article 1, Section 9, Clause 3 for federal law;  
Article 1, Section 10, for state laws;  
Prohibiting ex post facto laws;

***Statutes***

28, §2244, United States Codes  
§97-3-65, Mississippi Codes Ann.  
28, §1651(a), U.S.C.

***Rules:***

Rules 26.6 of the Mississippi Rules of Criminal Procedure;

## **STATEMENT OF THE CASE**

This case originated in U.S. Court of Appeal, pursuant to 28, §2244, U.S.C., by Petitioner, Jimmy Wren [Petitioner, hereinafter], requesting permission to file a second or successive application for a writ of habeas corpus, seeking relief under the New Rule of law in the state of Mississippi. The New Rule of law was created under Rule 26.4 of the Mississippi Rules of Criminal Procedure [MRCP] that provided similar situated litigants the opportunity to have a sentencing hearing, effective in July 1, 2017.

At a sentencing hearing, Petitioner would have had an opportunity to show the court, through witness testimony and other means that his character was not bad enough to warrant the maximum sentence since petitioner was a first offender.

The state would likewise have an opportunity to show the court, mitigating circumstances that demand the enhancement of the punishment to justify the imposition of the life sentence without the possibility of a parole.

Petitioner's claim is based on the fact, the New Rule of law under Rule 26.4 of the MRCP, effective July 1, 2017, denied due process and equal protection under the laws when not applied retroactively.

## **REASONS FOR GRANTING THE PETITION**

Petitioner, Jimmy Wren, Pro se and as a young black man at the age of 18 years old, with a tenth (10<sup>th</sup>) grade education, was brought to trial with his older uncle and co-defendant, Stanley Lester to defend against a capital rape charge and the co-defendant was only charged with accessory, even though both were equally guilty, Stanley's conviction was reversed on appeal, based on the jury instruction being a violation for due process, when the same jury instructions was used against the Petitioner also.

Petitioner believes that he was convicted because of the inability to get more than one attorney, when Stanley had at least three (3) attorneys; and petitioner's conviction, prosecution and sentence was the fruit of bias and prejudice towards petitioner and an abuse of discretion.

The U. S. Court of Appeals should have granted the application to file a second or successive application for habeas corpus because the actions of the trial court created a conflict with a New Rule of law under case, *Apprendi v. New Jersey*, 530 U.S. 466, because there is nothing in the record to indicate Petitioner deserved the maximum enhanced life sentence, without the possibility of parole and being a first offender.

The Court of Appeals abused its discretion by denying the application for permission to file a second or successive application for relief by habeas corpus, from the judgment of the state court imposing monetary sanctions for criminal contempt, without a show cause hearing or a trial to defend against the imposition of monetary sanctions.

The state supreme court abused its discretion by barring the petitioner of having access to the court to seek relief from the criminal conviction for procedure defects, when the court had knowledge that petitioner was

uneducated and untrained and had no knowledge of what procedures were involved.

Reasons for granting the petition continues:

Title 28, §2244 of the United States Codes is unconstitutional and violates due process and deprives similar situated litigants of equal protection under the law, based on the facts:

- [1] This statute places the legal burden on litigants and causes them to be denied access to the courts, when some of them are untrained, uneducated and have no knowledge of what is expected of them, within a specified time period;
- [2] This statute created ex post facto laws in violation of the United States Constitution, and take away many legal remedies from litigants that were available to them, before the enactment of 28, §2244, United States Codes;
- [3] This statute is unconstitutional because it requires litigants to ask the Court of Appeals for permission to exercise their federal protected rights to have access to the courts, based on restricted reasons and grounds; and their decisions are final;
- [4] There is no right or remedy to ask for a rehearing or further consideration from final decisions from the Court of Appeals denying applications for permission to file a second or successive application for habeas corpus relief;

[5] There is no right to appeal a final decision from the Court of Appeals, denying an application seeking permission to file a second or successive petition for habeas corpus relief;

### **CONCLUSION**

The petition for extraordinary writ of prohibition and mandamus should be granted.

Respectfully submitted,

Jimmy Wren #66051  
Jimmy Wren, 66051

8/24/20

Date